Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

FIDELMAR OROZCO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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290

QUESTION PRESENTED

Whether a District Court, when enhancing a sentence under the United States Sentencing Guidelines, can rely upon disputed hearsay portions of the Presentencing Investigation Report without requiring the government to present additional evidence.

LIST OF PARTIES

The parties to the proceedings below include the United States of America and Fidelmar Orozco.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 1

SENTENCING GUIDELINE PROVISION INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 7

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES

Dorman v. Higgins, 821 F.2d 133 (1st Cir. 1993) 10

United States v. Bernardine, 73 F.3d 1078 (11th Cir. 1996) 9

United States v. Burke, 80 F.3d 314 (8th Cir. 1996) 7

United States v. Coonce, 961 F.2d 1268 (7th Cir. 1992) 11

United States v. Darmond, 3 F.3d 1578 (2d Cir. 1993) 12

United States v. Gessa, 971 F.2d 1257 (6th Cir. 1992) 9

United States v. Greene, 71 F.3d 232 (6th Cir. 1995) 9

United States v. Hudson, 129 F.3d 994 (8th Cir. 1997) 9

United States v. Lee, 818 F.2d 1052 (2d Cir. 1987)..... 10

United States v. McGill, 32 F.3d 1138 (7th Cir. 1994) 10

United States v. O'Dell, 965 F.2d 937 (10th Cir. 1992) 10

United States v. Reyna, 130 F.3d 104 (5th Cir. 1997), *cert. denied*, 118 S. Ct. 1328 (1998)..... 9

United States v. Singh, 923 F.2d 1039 (3rd Cir. 1991) 7

United States v. Skrodzki, 9 F.3d 198 (1st Cir. 1993) 11

United States v. Williams, 41 F.3d 496 (9th Cir. 1994) 10

Williams v. United States, 503 U.S. 193 (1992) 12

STATUTES AND RULES OF DECISION

18 U.S.C. § 2 .....2, 3

18 U.S.C. § 3231 1

TABLE OF AUTHORITIES – Continued

Page

18 U.S.C. § 3742 1

21 U.S.C. § 841(a)(1) 2, 3

21 U.S.C. § 841(b)(1)(A) 2, 3, 12

21 U.S.C. § 841(b)(1)(C) 2, 3

21 U.S.C. § 846 ..... 2, 3

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 1

91 F.R.D. 289 11

154 F.R.D. 501 8

FED. R. CRIM. P. 32 ..... 7, 11, 12

U.S.S.G. § 2D1.1 5

U.S.S.G. § 3B1.1(c) 6

U.S.S.G. § 6A1.3 ..... 2, 7

PETITION FOR A WRIT OF CERTIORARI

The petitioner Fidelmar Orozco respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in this proceeding on April 14, 2000.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported. It is reprinted in the appendix to this petition at App. 1-2.

JURISDICTION

The United States District Court for the Southern District of Texas had subject matter jurisdiction over this case pursuant to 18 U.S.C. § 3231.

The jurisdiction of the United States Court of Appeals for the Fifth Circuit was based upon 28 U.S.C. § 1291 and 18 U.S.C. § 3742. The opinion and judgment were entered on April 14, 2000. This petition for writ of certiorari is due on July 13, 2000, the 90th day after the Fifth Circuit issued its opinion and judgment.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

SENTENCING GUIDELINE PROVISION INVOLVED

United States Sentencing Guideline § 6A1.3 states in pertinent part:

> When any factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor. In resolving any dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.

STATEMENT OF THE CASE

Petitioner Orozco pleaded guilty to three counts in a multi-count indictment accusing him and others of engaging in various drug offenses. In Count One, Petitioner Orozco was indicted for conspiring to possess with the intent to distribute methamphetamine and heroin, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A). In Count Two, Petitioner Orozco was indicted, not for conspiracy, but for the actual distribution of heroin, as well as aiding and abetting others in the distribution of heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2. Finally, in Count Three of the indictment, Petitioner Orozco was again indicted for the knowing and intentional distribution of a substance containing heroin, and for aiding and abetting in the distribution of heroin,

in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.

On December 15, 1997, the district court conducted a hearing pursuant to Rule 11 of the Federal Rules of Criminal Procedure, for the purposes of deciding whether to accept Mr. Orozco's decision to plead guilty to Counts 1, 2, and 3 of the indictment. At the conclusion of the Rule 11 hearing, the district court accepted Mr. Orozco's guilty plea and found that Mr. Orozco was guilty as charged in Counts 1, 2, and 3 of the indictment. The district court's judgment reflects that Mr. Orozco was convicted of the following offenses:

(1) *Count 1* (under 21 U.S.C. § 846) – for "[c]onspiracy to possess w/intent to distribute more than 1 kilogram of heroin [21 U.S.C. § 841(b)(1)(A)],"

(2) *Count 2* (under 21 U.S.C. § 841(a)(1)) – for "[p]ossession w/intent to distribute less than 100 grams of heroin [21 U.S.C. 841(b)(1)(C)]," and

(3) *Count 3* (under 21 U.S.C. § 841(a)(1)) – for"[p]ossession w/intent to distribute less than 100 grams of heroin [21 U.S.C. 841(b)(1)(C)]." App. 3-4.

The district court held a sentencing hearing on April 6, 1998. Based on the Presentence Investigation Report prepared by the probation officer – and after reducing the total offense level by three for Petitioner Orozco's acceptance of responsibility – the district court sentenced Mr. Orozco to 262 months imprisonment on each of the Counts 1, 2, and 3 (to be served concurrently), ten years supervised release on Count 1 and six years supervised

release on Counts 2 and 3 (also to be served concurrently), and ordered Mr. Orozco to pay a $150.00 assessment. Mr. Orozco appealed.

The presentence investigation report ("PSR") contained the following allegations concerning Mr. Orozco's unadjudicated conduct involving methamphetamine:

> During the latter part of March [1995], Fidelmar Orozco contacted a CI [confidential informant] about purchasing a vehicle capable of transporting 50 kilograms of cocaine from Brownsville to Dallas, Texas. Fidelmar Orozco and Israel Adame met with the CI on April 1, 1995. The CI provided them with a 1982 Pontiac with a hidden compartment. . . . At the meeting, Orozco disclosed that two Hispanic males had arrived in Houston from California with six pounds of methamphetamine. After showing Orozco and Adame how to gain access to the hidden compartment they took custody of the vehicle and departed the area.
>
> On April 4, 1995, agents on surveillance observed Fidelmar Orozco and Israel Adame meet with Rogelio Alvarez at a motel in Dallas. Alvarez had arrived from California to oversee the distribution of methamphetamine. Surveillance also followed Orozco and Adame to 1710 Beckley in Dallas, which was the residence of David Gaona. On April 19, 1995, a CI was debriefed and related that in addition to the six pounds of methamphetamine Orozco received in Houston on April 1, six more pounds of methamphetamine had been delivered for Orozco in Dallas on April 19, 1995. Orozco stated he paid $8,000 per pound but was selling the methamphetamine for $9,000 a pound. He asked the

> CI to help him sell two pounds. Rogelio Alvarez was the source of these twelve pounds (5.4 kilograms) of methamphetamine, according to Fidelmar Orozco.

The PSR held Mr. Orozco accountable for all twelve pounds of the methamphetamine discussed above.

The PSR further concluded that Fidelmar Orozco "was a manager/supervisor of a drug trafficking conspiracy and should be held accountable for the distribution of a total of 379 grams of heroin and 8,011.48 grams of methamphetamine." According to the PSR, the quantity of heroin and methamphetamine attributed to Orozco, for purposes of sentencing guideline calculations, was 8,390.48 kilograms of marijuana. Thus, the PSR computed the base offense level as 34 pursuant to U.S.S.G. § 2D1.1. Additionally, because Orozco was found to be a supervisor or manager, the base offense level was increased by 3 – for a total offense level of 37.

Mr. Orozco objected to the PSR's attributing to him twelve pounds of methamphetamine in April of 1995. Mr. Orozco's objections noted that, "[w]hile there is some corroboration for six of the twelve pounds, . . . there is no direct evidence as to an additional 6 pounds." Mr. Orozco correctly pointed out that it was inconsistent for the CI to have claimed knowledge that six additional pounds of methamphetamine were delivered to Orozco on April 19, 1995, when the CI was being "debriefed" on that very same day, *i.e.*, April 19, 1995. Thus, as Mr. Orozco explained in his objections below, even if there were some corroborating evidence that Orozco received some amount of methamphetamine in April 1995, "there is absolutely no corroboration for the additional six pounds

imputed to Defendant in the CI's April 19, 1995 debriefing."

Mr. Orozco also objected strenuously to the PSR's assertion that he "was a manager/supervisor of a drug trafficking conspiracy," on the basis that the probation officer who prepared the PSR "made no attempt to substantiate this conclusion." As Mr. Orozco pointed out, the evidence in this case "points to many random actions on the part of the defendant and others." Further, there was no evidence establishing that Mr. Orozco had a particular role in the course of his dealings. Alternatively, Mr. Orozco argued that if he had any aggravating role, U.S.S.G. § 3B1.1(c) would only call for an increase in the offense level by 2 (rather than by 3).

At the sentencing hearing, the district court overruled Mr. Orozco's objections to both the quantity of drugs attributed to him and the statement made by the CI about Mr. Orozco's alleged receipt of an additional six pounds of methamphetamine on April 19, 1995, the same day on which the CI was being debriefed by federal agents. Relying solely upon the PSR, the sentencing court found that "the evidence of the operation supports the existence, not just of a hope of having the quantity of drugs that the Government talks about." The district court further found that "Mr. Orozco [was] the most significant" participant among the 15 or so people who were charged in the conspiracy and that therefore, a three-level increase in the offense level was warranted. However, the district court granted Mr. Orozco a three-level reduction based upon his acceptance of responsibility which made Mr. Orozco's guideline range of imprisonment from 210 to 262 months. The district court

then sentenced Mr. Orozco to 262 months in prison, ten years of supervised release, and a $150 tax.

REASONS FOR GRANTING THE WRIT

This case presents a question of fundamental importance that directly impacts sentence enhancements that are based upon disputed statements made in a PSR. Moreover, there is a split among the circuits regarding this issue.

There is a Split of Authority Among the Courts of Appeals Regarding the Use of Presentencing Reports as Evidence in Sentencing

The purpose of Federal Rule of Criminal Procedure 32 is to ensure that the defendant's sentence is based on accurate and reliable information. *See United States v. Singh*, 923 F.2d 1039, 1044 (3rd Cir. 1991). As amended in 1994, Rule 32 attempts to make the presentence report more accurate. Because the court's resolution of disputed sentencing factors in the PSR often has a measurable effect on the applicable punishment, greater care in the resolution of such factual disputes is required. *See* U.S.S.G. § 6.A1.3, comment. (backg'd.). Moreover, PSRs are themselves not evidence and therefore, the government must be required to prove at the sentencing hearing those facts stated in the PSR which the defendant is challenging. *See United States v. Burke*, 80 F.3d 314, 316 (8th Cir. 1996).

At Mr. Orozco's sentencing, the trial judge agreed that "every nit makes a substantial difference in the sentence. Th[is] is what the guidelines have done, is make nits seriously important." However, the judge went on to accept as sufficiently reliable a statement made by the CI that Mr. Orozco had, on the same day the CI was being debriefed, received an additional quantity of illegal drugs. No explanation was sought by the court, nor was one offered by the government, as to how the CI would have come by this hearsay information. The court made no attempt to insure the validity of the CI's statement, and, in fact, admitted that it was basing its assessment of the reliability of the CI's statement on a presumption.[1]

Although it is true that the trial court has discretion in accepting the PSR or requesting an evidentiary hearing, it is equally true that the "Sentencing Guidelines specifically provide that the court must provide the parties with a reasonable opportunity to offer information concerning a sentencing factor reasonably in dispute." *See* 154 F.R.D. 501. Mr. Orozco, being unable to disprove the CI's statement, had to depend upon the government to offer up the necessary additional proof of the veracity of the CI's statement. The CI, and therefore the government, was in a position to explain how it was that the CI could know what he claimed to know. This was neither done, nor requested by the sentencing court.

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[1] "If he is debriefing on the 19th, he says that we have been dealing with these drugs, and today, presumably, I agree, or earlier today . . . there's enough detail to make that consistent and credible."

The Fifth Circuit has held that a sentencing court need not consider additional evidence when a defendant challenges factual assertions in a PSR. *See e.g., United States v. Reyna*, 130 F.3d 104, 112 (5th Cir. 1997) (district court may adopt disputed facts), *cert. denied*, 118 S. Ct. 1328 (1998). However, Mr. Orozco contends that this Court should instead follow the contrary position of numerous other circuits listed below:

8th Circuit	*United States v. Hudson*, 129 F.3d 994, 995 (8th Cir. 1997) ("[W]hen the defendant makes a timely objection to the PSR, '[i]f the sentencing court chooses to make a finding with respect to the disputed facts, it must do so on the basis of evidence, and not the presentence report' ").
11th Circuit	*United States v. Bernardine*, 73 F.3d 1078, 1080 (11th Cir. 1996) (when a defendant objects to factual recitations in PSR that support a sentencing enhancement, the prosecution has the burden to offer "specific and reliable evidence" sufficient to prove the PSR's disputed allegations by a preponderance of the evidence).
6th Circuit	*United States v. Greene*, 71 F.3d 232, 236 (6th Cir. 1995) (prosecution must offer evidence and cannot rely on PSR in order to prove sentencing enhancement when the defendant objects to the factual findings in the PSR that support its recommendation for the sentencing enhancement); *United States v. Gessa*, 971 F.2d 1257, 1266 n.7 (6th Cir. 1992) (PSR is not "evidence"

on which the prosecution may rely to prove sentencing enhancement).

10th Circuit — *United States v. O'Dell*, 965 F.2d 937, 938 (10th Cir. 1992) (district court may rely on factual allegations in PSR concerning a sentencing enhancement only if those allegations are "uncontested" by the defendant; otherwise, prosecution has the burden to "produce evidence" at the sentencing hearing and prove disputed enhancement by preponderance of the evidence).[2]

Cf. United States v. Williams, 41 F.3d 496, 499-500 (9th Cir. 1994) (sentencing judge may consider hearsay evidence, but evidence must be reliable. District court erred in relying on hearsay upon hearsay when imposing sentence enhancement); *United States v. McGill*, 32 F.3d 1138 (7th Cir. 1994) (Hearsay is permitted in sentencing proceedings, but the court may only rely upon hearsay when it is reliable and defendant has a reasonable opportunity to

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[2] The Second Circuit took this position in pre-Guidelines cases, although that court has apparently not addressed the issue in a case applying the Guidelines. *See Dorman v. Higgins*, 821 F.2d 133, 138 (2d Cir. 1987) ("If the defendant alleges the [presentence] report is inaccurate in any respect, the sentencing court may not take the controverted part of the report into account in imposing sentence unless it has found that the government has established by a preponderance of the evidence . . . that the controverted statements are accurate."); *United States v. Lee*, 818 F.2d 1052, 1055-57 (2d Cir. 1987) (if defendant objects to sentencing enhancement in PSR, prosecution must proffer evidence in support of the disputed portion of PSR).

rebut the hearsay); *United States v. Coonce*, 961 F.2d 1268, 1280 (7th Cir. 1992) (if the defendant offers "some evidence beyond a mere denial calling the reliability or the correctness of the alleged facts [in the PSR] into question," then "the burden shifts back to the prosecution," which must offer evidence other than the PSR itself).

But see United States v. Skrodzki, 9 F.3d 198, 201-02 (1st Cir. 1993) (district court may simply adopt disputed factual findings in PSR and properly refuse to conduct an evidentiary hearing on disputed sentencing issues).

Those circuits which interpret Rule 32 as requiring the government to provide additional evidence once aspects of the PSR have been objected to by the defendant, maintain the integrity and purpose of Rule 32. This is especially true considering that the defendant's interest in an accurate and reliable PSR does not end with sentencing. Throughout the defendant's correctional process experience, the PSR accompanies the defendant and influences classification within the system, furlough opportunities, and treatment program options. Moreover, the PSR plays a critical role during parole determination. *See* 91 F.R.D. 289, 349-50.

If all or some of the objected-to quantities of methamphetamine attributed to Mr. Orozco in the PSR were eliminated from the guideline analysis and there had been no three-level adjustment for Mr. Orozco's role in the offense (or only a two-level adjustment, as Mr. Orozco alternatively argued), then Mr. Orozco's total offense level – with the three-point reduction for acceptance of responsibility – would have been between 29 and 33.

Reducing the total offense level to 33, even with a criminal history category of IV, would have produced a guideline sentence range of 188-235 months, which is substantially lower than the 262-month sentence that Mr. Orozco received. Under these circumstances, then, the district court's refusal to conduct an evidentiary hearing on the amounts of methamphetamine attributable to Mr. Orozco, and his alleged managerial role, constituted harmful error. *See Williams v. United States*, 503 U.S. 193, 202, 112 S. Ct. 1112, 1120 (1992).[3]

CONCLUSION

The practice of sentencing courts within the First and Fifth Circuits, of refusing to require that the government offer up additional information when presentence report information is challenged, circumvents the purpose of Rule 32 and, therefore, makes any challenge to a PSR meaningless. Therefore, for the reasons stated herein, a writ of certiorari should be granted in this case. The

[3] The government may argue that no harm resulted because Mr. Orozco would have been subject to a mandatory minimum sentence of 240 months (or 20 years) pursuant to 21 U.S.C. § 841(b)(1)(A). However, because the judgment in this case only found Mr. Orozco guilty of a conspiracy to possess heroin – and because the amount of heroin attributed to Mr. Orozco was less than 1 kilogram – it is questionable whether the mandatory minimum sentence of 20 years could apply in this case. *See United States v. Darmond*, 3 F.3d 1578, 1581 (2d Cir. 1993) (mandatory minimum sentences in section 841(b)(1) apply only to conduct that actually resulted in conviction under section 841(a)).

judgment of the Court of Appeals should be reversed, the challenged presentence report information should be excluded from consideration, and Mr. Orozco should be resentenced accordingly.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20349
Conference Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

FIDELMAR OROZCO,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-95-CR-314-1

(Filed Apr. 14, 2000)

Before WIENER, DeMOSS and PARKER, Circuit Judges.

PER CURIAM:*

Fidelmar Orozco appeals from the judgment entered after he pleaded guilty to conspiracy to possess heroin and two counts of possession of heroin with intent to distribute.

Orozco argues that his conviction cannot be affirmed until the record is supplemented with a page missing

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

from the indictment. The Government included the missing page in its record excerpts, and Orozco has not filed a reply brief or responded in any other way to the production of the missing page. Accordingly, we conclude that Orozco has abandoned any argument relating to the sufficiency of the indictment. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993).[1]

Orozco argues that the district court erred when, despite his objections, it did not require the Government to produce evidence in support of information contained in the presentence report (PSR). As he concedes, however, we have previously held that a defendant's failure to present any evidence in support of his objections means that the sentencing court is "free to adopt [the PSR's] findings without further inquiry or explanation." *United States v. Vital*, 68 F.3d 114, 120 (5th Cir. 1995).

AFFIRMED.

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[1] We note that Orozco "[bore] the burden of creating the record on appeal." *United States v. Coveney*, 995 F.2d 578, 587 (5th Cir. 1993).

United States District Court
Southern District of Texas

UNITED STATES OF AMERICA

v.

FIDELMAR OROZCO

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Filed Apr. 13, 1998)

Case Number:
4:95CR00314-001

Russell Henderson
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s) 1, 2, and 3 on December 15, 1997

* * *

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 U.S.C. § 846	Conspiracy to possess w/intent to distribute more than 1 kilogram of heroin. [21 USC 841(b)(1)(A)]	10/10/1995	1
21 U.S.C. § 841(a)(1)	Possession w/intent to distribute less than 100 grams of heroin [21 USC 841(b)(1)(C)]	12/13/1994	2

21 U.S.C. § 841(a)(1)	Possession w/intent to distribute less than 100 grams of heroin [21 USC 841(b)(1)(C)]	03/22/1995	3

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

* * *

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 465-33-6742

Defendant's Date of Birth: 12/15/1952

Defendant's USM No.: 76050-079

Defendant's Residence Address:
7820 Junior

Houston TX 77012

Defendant's Mailing Address:
7820 Junior

Houston TX 77012

04/06/1998
Date of Imposition of Judgment

/s/ Illegible
Signature of Judicial Officer

LYNN N. HUGHES
UNITED STATES DISTRICT JUDGE
Name & Title of Judicial Officer

4-10-98
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 262 month(s).

The term consists of TWO HUNDRED SIXTY TWO (262) MONTHS on each of Counts 1, 2, and 3 to be served concurrently.

The court makes the following recommendations to the Bureau of Prisons:

[X] The defendant is remanded to the custody of the United States Marshal.

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 year(s)

The term consists of **TEN (10) YEARS** as to Count 1, and **SIX (6) YEARS** as to Counts 2 and 3, to be served concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

[ ] The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

[X] The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision – Sheet 3.01

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

14) if restitution has been ordered, the defendant shall make restitution as ordered by the Court and in accordance with the applicable provisions of Title 18 U.S.C. 2248, 2259, 2264, 2327, 3663, 3663A, and/or 3664. The defendant shall also pay the assessment imposed in accordance with Title 18 U.S.C. 3013;

15) the defendant shall notify the U. S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

SPECIAL CONDITIONS OF SUPERVISION

If deported, the defendant is not to re-enter the United States illegally. If the defendant is deported during the period of probation or the supervised release term, supervision by the probation office becomes inactive. If the defendant returns, the defendant shall report to the nearest U.S. Probation Office immediately. Supervision by the

probation office reactivates automatically upon the defendant's reporting.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 150.00	$	$

[ ] If applicable, restitution amount ordered pursuant to plea agreement ..... $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ 0.00.

* * *

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other monetary penalties shall be due as follows:

A [X] in full immediately; or

* * *

STATEMENT OF REASONS

[ ] The court adopts the factual findings and guideline application in the presentence report.

OR

[X] The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

The Court finds that this defendant should receive a three-level reduction for acceptance of responsibility.

Guideline Range Determined by the Court:

Total Offense Level: 34

Criminal History Category: IV

Imprisonment Range: 240 to 262 months

Supervised Release Range: 10 to 10 years

Fine Range: $ 17,500.00 to $ 12,000,000.00

[X] Fine is waived or is below the guideline range because of inability to pay.

Total Amount of Restitution: $ 0.00

* * *

[X] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

* * *